

AMENDED IN ASSEMBLY JUNE 21, 2004

AMENDED IN SENATE MAY 11, 2004

AMENDED IN SENATE MARCH 16, 2004

SENATE BILL

No. 1159

Introduced by Senator Vasconcellos

(Principal coauthors: Assembly Members Berg and Nation)

(Coauthors: Assembly Members Goldberg, Hancock, Jerome Horton,
Laird, Levine, and Vargas)

February 2, 2004

An act to amend Sections 4145 and 4147 of, and to repeal Section 4146 of, the Business and Professions Code, to amend Section 11364 of, and to add Chapter 13.5 (commencing with Section 121285) to Part 4 of Division 105 of, the Health and Safety Code, ~~and to amend Sections 41770 and 41900 of, and to add Section 41803 to, the Public Resources Code, relating to hypodermic needles and syringes.~~

LEGISLATIVE COUNSEL'S DIGEST

SB 1159, as amended, Vasconcellos. Hypodermic needles and syringes.

(1) Existing law regulates the sale, possession, and disposal of hypodermic needles and syringes. Under existing law, a prescription is required to purchase a hypodermic needle or syringe for human use, except to administer adrenaline or insulin.

This bill would authorize a licensed pharmacist, until December 31, 2008, to sell or furnish 10 or fewer hypodermic needles or syringes to a person for human use without a prescription if the pharmacy is registered with a local health department in the Disease Prevention Demonstration Project, which would be created by the bill to evaluate

the long-term desirability of allowing licensed pharmacies to sell or furnish nonprescription hypodermic needles or syringes to prevent the spread of blood-borne pathogens, including HIV and hepatitis C.

The bill would require local health departments to register pharmacies in the program and to cooperate with ~~the Office of AIDS of~~ the State Department of Health Services, thereby imposing a state-mandated local program. The bill would require ~~the Office of AIDS of~~ the State Department of Health Services, in conjunction with an advisory panel, to evaluate the effects of allowing the sale of hypodermic needles or syringes without prescription, and would require a report to be submitted to the Governor and the Legislature by January 15, 2008, ~~subject to funding being available from federal or private sources.~~ The demonstration program would terminate on December 31, 2008.

Alternatively, the bill would also authorize the sale or furnishing of hypodermic needles or syringes to a person for human use without a prescription if the person is known to the furnisher and has previously provided the furnisher with a prescription or other proof of a legitimate medical need.

The bill would make it unlawful to discard or dispose of a hypodermic needle or syringe upon the grounds of a playground, beach, park, or any public or private elementary, vocational, junior high, or high school. The bill would make a knowing violation of this prohibition a crime, thereby imposing a state-mandated local program.

(2) Existing law requires a pharmacist to keep detailed records of nonprescription sales of hypodermic needles and syringes.

This bill would delete that requirement.

(3) Existing law prohibits the possession and sale of drug paraphernalia.

This bill, until December 31, 2008, would authorize a person to possess 10 or fewer hypodermic needles or syringes if acquired through an authorized source.

(4) ~~Existing law requires a county or regional agency to prepare an integrated waste management plan based on submissions from cities and the county that includes a program element for the safe collection, recycling, treatment, and disposal of hazardous waste generated by households that should be separated from the solid waste stream.~~

~~This bill would authorize, as part of the update of the household waste element described above, a program to be identified for the safe collection, recycling, treatment, and disposal of household sharps~~

~~waste, defined to mean hypodermic needles, syringes, and lancets. The bill would enact other related provisions.~~

~~(5) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement, including the creation of a State Mandates Claims Fund to pay the costs of mandates that do not exceed \$1,000,000 statewide and other procedures for claims whose statewide costs exceed \$1,000,000.~~

~~This bill would provide that with regard to certain mandates no reimbursement is required by this act for a specified reason.~~

~~With regard to any other mandates, this bill would provide that, if the Commission on State Mandates determines that the bill contains costs so mandated by the state, reimbursement for those costs shall be made pursuant to the statutory provisions noted above.~~

~~(5) This bill would make the operation of its provisions contingent upon the enactment of SB 1362.~~

~~Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: yes.~~

The people of the State of California do enact as follows:

1 SECTION 1. Section 4145 of the Business and Professions
2 Code is amended to read:

3 4145. (a) Notwithstanding any other provision of law, a
4 pharmacist or physician may, without a prescription or a permit,
5 furnish hypodermic needles and syringes for human use, and a
6 person may, without a prescription or license, obtain hypodermic
7 needles and syringes from a pharmacist or physician for human
8 use, if one of the following requirements is met:

9 (1) The person is known to the furnisher and the furnisher has
10 previously been provided a prescription or other proof of a
11 legitimate medical need requiring a hypodermic needle or syringe
12 to administer a medicine or treatment.

13 (2) For the period commencing January 1, 2005, and ending
14 December 31, 2008, a pharmacist may furnish or sell 10 or fewer
15 hypodermic needles or syringes at any one time to a person 18
16 years of age or older if the pharmacist works for a pharmacy that
17 is registered for the Disease Prevention Demonstration Project
18 pursuant to Chapter 13.5 (commencing with Section 121285) of

1 Part 4 of Division 105 of the Health and Safety Code and the
2 pharmacy complies with the provisions of that chapter.

3 (b) Notwithstanding any other provision of law, a pharmacist,
4 veterinarian, or person licensed pursuant to Section 4141 may,
5 without a prescription or license, furnish hypodermic needles and
6 syringes for use on animals, and a person may, without a
7 prescription or license, obtain hypodermic needles and syringes
8 from a pharmacist, veterinarian, or person licensed pursuant to
9 Section 4141 for use on animals, providing that no needle or
10 syringe shall be furnished to a person who is unknown to the
11 furnisher and unable to properly establish his or her identity.

12 SEC. 2. Section 4146 of the Business and Professions Code
13 is repealed.

14 SEC. 3. Section 4147 of the Business and Professions Code
15 is amended to read:

16 4147. (a) For the purposes of this section, “playground”
17 means any park or outdoor recreational area specifically designed
18 to be used by children that has play equipment installed or any
19 similar facility located on public or private school grounds or
20 county parks.

21 (b) Any hypodermic needle or syringe that is to be disposed of,
22 shall be contained, treated, and disposed of, pursuant to Part 14
23 (commencing with Section 117600) of Division 104 of the Health
24 and Safety Code.

25 (c) It is unlawful to discard or dispose of a hypodermic needle
26 or syringe upon the grounds of a playground, beach, park, or any
27 public or private elementary, vocational, junior high, or high
28 school.

29 (d) A person who knowingly violates subdivision (c) is guilty
30 of a misdemeanor, and upon conviction shall be punished by a fine
31 of not less than two hundred dollars (\$200) and not more than two
32 thousand dollars (\$2,000), or by imprisonment in a county jail for
33 up to six months, or by both that fine and imprisonment.

34 (e) Subdivision (c) does not apply to the containment,
35 treatment, and disposal of medical sharps waste from medical care
36 or first aid services rendered on school grounds, nor to the
37 containment, treatment, and disposal of hypodermic needles or
38 syringes used for instructional or educational purposes on school
39 grounds.

SEC. 4. Section 11364 of the Health and Safety Code is amended to read:

11364. (a) It is unlawful to possess an opium pipe or any device, contrivance, instrument, or paraphernalia used for unlawfully injecting or smoking (1) a controlled substance specified in subdivision (b), (c), or (e), or paragraph (1) of subdivision (f) of Section 11054, specified in paragraph (14), (15), or (20) of subdivision (d) of Section 11054, specified in subdivision (b) or (c) of Section 11055, or specified in paragraph (2) of subdivision (d) of Section 11055, or (2) a controlled substance which is a narcotic drug classified in Schedule III, IV, or V.

(b) This section shall not apply to hypodermic needles or syringes that have been containerized for safe disposal in a container that meets state and federal standards for disposal of sharps waste.

(c) For the period commencing January 1, 2005, and ending December 31, 2008, subdivision (a) shall not apply to the possession solely for personal use of 10 or fewer hypodermic needles or syringes if acquired from an authorized source.

SEC. 5. Chapter 13.5 (commencing with Section 121285) is added to Part 4 of Division 105 of the Health and Safety Code, to read:

CHAPTER 13.5. DISEASE PREVENTION DEMONSTRATION PROJECT

121285. (a) The Disease Prevention Demonstration Project, a collaboration between pharmacies and local and state health officials, is hereby authorized for the purpose of evaluating the long-term desirability of allowing licensed pharmacists to furnish or sell nonprescription hypodermic needles or syringes to prevent the spread of blood-borne pathogens, including HIV and hepatitis C.

~~(b) The Office of AIDS shall, subject to the availability of federal or private funds for these purposes, evaluate the effects of~~

(b) The State Department of Health Services shall evaluate the effects of allowing pharmacists to furnish or sell a limited number of hypodermic needles or syringes without prescription, and provide a report to the Governor and the Legislature on or before January 15, 2008. The report shall include, but need not be limited

1 to, the effect of nonprescription hypodermic needle or syringe sale
2 on all of the following:

3 (1) Hypodermic needle or syringe sharing practice among
4 those who inject illegal drugs.

5 (2) Rates of disease infection caused by hypodermic needle or
6 syringe sharing.

7 (3) Needlestick injuries to law enforcement officers and waste
8 management employees.

9 (4) Drug crime or other crime in the vicinity of pharmacies.

10 (5) Safe or unsafe discard of used hypodermic needles or
11 syringes.

12 (6) Rates of injection of illegal drugs.

13 ~~(e) The Office of AIDS, subject to the availability of federal or~~
14 ~~private funds for this purpose, shall convene an uncompensated~~

15 *(c) The State Department of Health Services shall convene an*
16 *uncompensated evaluation advisory panel comprised of all of the*
17 *following: two or more specialists in the control of infectious*
18 *diseases; one or more representatives of the California State Board*
19 *of Pharmacy; one or more representatives of independent*
20 *pharmacies; one or more representatives of chain pharmacy*
21 *owners; one or more representatives of law enforcement*
22 *executives, such as police chiefs and sheriffs; one or more*
23 *representatives of rank and file law enforcement officers; a*
24 *specialist in hazardous waste management from the State*
25 *Department of Health Services; one or more representatives of*
26 ~~*rank and file waste haulers; one or more*~~ *representatives of the*
27 *waste management industry; and one or more representatives of*
28 *local health officers.*

29 (d) In order to furnish or sell nonprescription hypodermic
30 needles or syringes as part of the Disease Prevention
31 Demonstration Project, a pharmacy shall do all of the following:

32 (1) Register with the local health department by providing a
33 contact name and related information, and certify that it will
34 provide, at the time of furnishing or sale of hypodermic needles or
35 syringes, written information or verbal counseling on all of the
36 following:

37 (A) Local options for accessing drug treatment.

38 (B) Local options for accessing testing and treatment for HIV
39 and hepatitis C.

1 (C) Local options for safe disposal of sharps waste, including,
2 if available, the locations of authorized needle exchange
3 programs, home-generated sharps consolidation points as defined
4 in Section 117904, or medical waste generators for disposal
5 pursuant to Section 118147.

6 (2) Store hypodermic needles and syringes so that they are
7 available only to authorized personnel, and not openly available to
8 customers.

9 (3) In order to provide for the safe disposal of hypodermic
10 needles and syringes, a registered pharmacy shall provide one or
11 more of the following options:

12 (A) An onsite safe hypodermic needle and syringe collection
13 and disposal program.

14 (B) Furnish or make available for purchase mail-back sharps
15 disposal containers authorized by the United States Postal Service
16 that meet applicable state and federal requirements, and provide
17 tracking forms to verify destruction at a certified disposal facility.

18 (C) Furnish or make available for purchase personal sharps
19 disposal containers that meet state and federal standards for
20 disposal of medical waste.

21 (e) Local health departments shall be responsible for all of the
22 following:

23 (1) Maintaining a list of all pharmacies within the local health
24 department's jurisdiction that have registered under the Disease
25 Prevention Demonstration Project.

26 (2) Providing pharmacies with written information that can be
27 reproduced that is to be provided in writing or orally by the
28 pharmacy at the time of furnishing or the sale of nonprescription
29 hypodermic needles or syringes, including all of the following:

30 (A) Local options for accessing drug treatment.

31 (B) Local options for accessing testing and treatment for HIV
32 and hepatitis C.

33 (C) Local options for safe disposal of sharps waste, including,
34 if available, the locations of authorized needle exchange
35 programs, home-generated sharps consolidation points as defined
36 in Section 117904, or medical waste generators for disposal
37 pursuant to Section 118147.

38 (3) Cooperating with the ~~Office of AIDS~~ *State Department of*
39 *Health Services* in the collection and analysis of data relative to the

1 evaluation of the Disease Prevention Demonstration Project, as
2 needed.

3 (f) As used in this chapter, “sharps waste” means hypodermic
4 needles, syringes, and lancets.

5 ~~SEC. 6. Section 41770 of the Public Resources Code is~~
6 ~~amended to read:~~

7 ~~41770. (a) Except as provided in subdivision (d), each~~
8 ~~countywide or regional agency integrated waste management~~
9 ~~plan, and the elements thereof, shall be reviewed, revised, if~~
10 ~~necessary, and submitted to the board every five years in~~
11 ~~accordance with the schedule set forth under Chapter 7~~
12 ~~(commencing with Section 41800).~~

13 ~~(b) Any revisions to a countywide or regional agency~~
14 ~~integrated waste management plan, and the elements thereof, shall~~
15 ~~use a waste disposal characterization method that the board shall~~
16 ~~develop for the use of the city, county, city and county, or regional~~
17 ~~agency. The city, county, city and county, or regional agency shall~~
18 ~~conduct waste disposal characterization studies, as prescribed by~~
19 ~~the board, if it fails to meet the diversion requirements of Section~~
20 ~~41780, at the time of the five-year revision of the source reduction~~
21 ~~and recycling element.~~

22 ~~(c) The board may review and revise its regulations governing~~
23 ~~the contents of revised source reduction and recycling elements to~~
24 ~~reduce duplications in one or more components of these revised~~
25 ~~elements.~~

26 ~~(d) On and after January 1, 2005, when a county or regional~~
27 ~~agency revises its countywide or regional integrated waste~~
28 ~~management plan and its elements, the city and county household~~
29 ~~hazardous waste elements may be updated to include a program for~~
30 ~~the safe collection, treatment, and disposal of sharps waste~~
31 ~~generated by households. As used in this subdivision, “sharps~~
32 ~~waste” means hypodermic needles, syringes, and lancets.~~

33 ~~SEC. 7. Section 41803 is added to the Public Resources Code,~~
34 ~~to read:~~

35 ~~41803. In addition to the provisions of Section 41802, any~~
36 ~~household hazardous waste plan submitted to the board after~~
37 ~~January 1, 2005, may include a program for the safe collection,~~
38 ~~treatment, and disposal of sharps waste generated by households~~
39 ~~that may include the following:~~

~~(a) The designation of authorized locations such as household hazardous waste collection facilities, designated hospitals and clinics, and fire stations, that will accept sharps waste.~~

~~(b) Efforts by the local agency to inform and encourage the public to return sharps waste to designated collection locations.~~

~~(c) Efforts by the local agency to inform and encourage the public to subscribe to mail back programs authorized by the United States Postal Service.~~

~~(d) Expenditures for the safe collection, treatment, and disposal of sharps waste, consideration of the feasibility of offering low-cost mail-back programs for senior and low-income households.~~

~~As used in this section, “sharps waste” means hypodermic needles, syringes, and lancets.~~

~~SEC. 8. Section 41900 of the Public Resources Code is amended to read:~~

~~41900. Each city and county shall demonstrate a funding source, or sources, available to pay for preparing, adopting, and implementing the element or plan, as required by this part, including fees imposed pursuant to Section 41901. Plans submitted after January 1, 2005, may also include the identification of funding sources for the collection, treatment, and disposal of sharps waste generated by households. As used in this section, “sharps waste” means hypodermic needles, syringes, and lancets.~~

~~SEC. 9.~~

~~SEC. 6. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution for certain costs that may be incurred by a local agency or school district because in that regard this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.~~

~~However, notwithstanding Section 17610 of the Government Code, if the Commission on State Mandates determines that this act contains other costs mandated by the state, reimbursement to local agencies and school districts for those costs shall be made pursuant to Part 7 (commencing with Section 17500) of Division~~

1 4 of Title 2 of the Government Code. If the statewide cost of the
2 claim for reimbursement does not exceed one million dollars
3 (\$1,000,000), reimbursement shall be made from the State
4 Mandates Claims Fund.

5 *SEC. 7. This act shall become operative only if Senate Bill*
6 *1362 of the 2003–04 Regular Session is enacted and becomes*
7 *effective on or before January 1, 2005.*

